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February 7, 2022

VIA ECF

The Honorable Analisa Torres
United States District Court
Southern District of New York
500 Pearl Street, Courtroom 15D
New York, New York 10007

Re: *Hess and Padilla v. Bed Bath & Beyond, Inc.*
Index No. 1:21-cv-4099-AT

Dear Judge Torres:

The undersigned represents Defendant Bed Bath & Beyond Inc. (“Bed Bath & Beyond”) in this matter. I write pursuant to your Honor’s Individual Practices I(C) respectfully requesting an adjournment to file a motion to dismiss Plaintiffs’ Second Amended Complaint (“SAC”). On January 4, 2022, Your Honor set a briefing schedule for the instant motion to be filed by February 8, 2022. Yesterday evening at 10:19 PM, within 48 hours of Defendant’s anticipated filing, Steven J. Moser, Esq., counsel for Plaintiffs, contacted the undersigned stating “[w]e anticipate moving to amend the complaint...” and “are in the process of preparing the pleading, but it is not final yet.”

The relevant procedural history follows. Defendant initially raised deficiencies with the original Complaint in July 2021 by submitting a letter describing such deficiencies to Plaintiffs pursuant to Your Honor’s Individual Practices. In attempting to address such deficiencies, Plaintiffs filed the First Amended Complaint (“FAC”) on September 8, 2021. The FAC did not cure all deficiencies, and, as such, with the Court’s permission, Defendant filed a Motion to Dismiss the FAC on November 4, 2021. On December 12, 2021, Plaintiffs filed the SAC pending Defendant’s reply brief in further support of its Motion to Dismiss the FAC.

Because of Plaintiffs’ recent indication of their intent to file a further amended complaint, Defendant seeks an adjournment of its February 8, 2022 deadline to file a Motion to Dismiss the SAC, until such time that: (1) it is decided whether Plaintiffs are permitted to file a further amended complaint; and, if so, (2) such further amended complaint is filed. At such time, Defendant will be able to assess whether it will need to supplement or otherwise revise the current version of its Motion to Dismiss (which it is prepared to file by tomorrow), or if it can file the current iteration of it. In connection with this request for an adjournment, Defendant respectfully requests that it be permitted to submit a proposed briefing schedule.

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Defendant requested Plaintiffs' consent to this adjournment; however, despite responding to Defendant's email requesting their consent, Plaintiffs did not affirmatively provide either their consent or refusal to consent prior to filing.

This is Defendant's first request for an extension of its time to file a motion to dismiss; however, Defendant previously sought the Court's approval to treat its original Motion to Dismiss the FAC as a motion to dismiss the SAC.

Thank you for Your Honor's consideration.

Respectfully submitted,

/s/ Jeffrey H. Ruzal

Jeffrey H. Ruzal

cc: Paul Pagano, Esq. and Steven Moser, Esq. (via ECF)